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BEFORE HIS EXCELLENCY THE GOVERNOR-IN-COUNCIL.

REPLY

OF THE

WINNIPEG

BOARD OF TRADE

(SHIPPERS' SECTION.)

To arguments submitted by Grand Trunk Railway Company of Canada and Grand Trunk Pacific Railway Company; Canadian Pacific Railway Company, and Canadian Northern Railway Company.

In the appeal of the Winnipeg Board of Trade (Shippers' Section) from the decision of the Board of Railway Commissioners for Canada on the application by Canadian Railway Companies for a recommendation to the Governor-in-Council under the War Measures Act for a general advance in freight and passenger rates. (B.R.C. File 27,840.)

FEBRUARY 25, 1918.

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Before

His Excellency the Governor-in-Council

In the appeal of the Winnipeg Board of Trade (Shippers' Section) from the decision of the Board of Railway Commissioners for Canada on the application of Canadian Railway Companies for a recommendation to the Governor-in-Council under the War Measures Act for a general advance in freight and passenger rates. (B. R. C. File 27,840).

The Winnipeg Board of Trade (Shippers' Section) acknowledges the receipt of arguments from the Grand Trunk Railway Company of Canada and the Grand Trunk Pacific Railway Company, the Canadian Pacific Railway Company and the Canadian Northern Railway Company.

The Canadian Pacific Railway Company is chiefly concerned in the appeal, and we realize the necessity of giving first consideration to its factum. The contentions advanced there with reference to general questions are supported by counsel for the other companies in their memoranda, so that repetition may be avoided by measure by dealing in detail with only one.

The railway companies apparently hold fast to the belief that this appeal has to do with matters of accounting only; that figures constitute the principal evidence; and that questions of policy are not to be included in the appeal. That belief is the exact opposite of our own. We think the opportunity to approach the Governor-in-Council includes the privilege of discussing the whole railway situation with a view to advocating the remedy that commends itself to us as being most suitable at the present time. Our opinion is strengthened by the knowledge that the Right Honorable the Prime Minister has indicated to us that course by his attitude at the hearing in Ottawa. As representatives of the public, we feel that we should have plenty of scope to discuss transportation issues. The people provide the railway companies with all the revenue that is secured through tolls, and their interest in the matter is not confined to the mere act of paying those tolls. They have reason to inquire why they should pay them. If additional charges are to be levied, they have the right to take any step that will protect their legitimate interests.

**REPLY TO ARGUMENT SUBMITTED ON BEHALF OF THE CANADIAN
PACIFIC RAILWAY COMPANY.**

The Shippers' Section notes with some interest the suggestion of the Canadian Pacific Railway that the issue in this appeal should be kept within narrow limits. The company maintains "that the Governor-in-Council should deal specifically with the merits in precisely the same way as if the appeal was one from a lower court to a higher court." Perhaps this contention may be admitted in part, but it ignores the main feature of the case. An appeal from a lower court to a higher court is necessarily confined in its scope to the material submitted to the lower court. The analogy here is only partial. We submit that in addition to the material presented to the Board of Railway Commissioners there is plenty of opportunity for the discussion of general matters that were excluded from the original hearings. This opportunity includes the right to offer any argument that bears on the railway situation in Canada. His Excellency the Governor-in-Council is in a position to receive and consider any suggestion that may assist him in finding a solution for the problems that are raised in connection with our appeal. We have approached the subject from that standpoint, both in our original argument and in our preparation for this reply.

It is difficult to understand the attitude of the Canadian Pacific Railway in insisting that the issue shall be circumscribed in the way it suggests. The Shippers' Section does not pretend to be familiar with all the legal aspects of the case; it assumes that the Governor-in-Council is not wholly bound by technical limitations. Nor does the Board of Railway Commissioners consider itself bound to that extent. It had no hesitation in receiving and giving careful attention to a memorandum prepared by counsel for the Canadian Pacific Railway Company two months after public hearings in this case had closed. The Shippers' Section has drawn attention to this extraordinary procedure in its appeal to the Governor-in-Council and in its printed argument. These references may have escaped the attention of counsel for the Canadian Pacific Railway Company, but that does not lessen their importance. We repeat that we had no opportunity of considering this memorandum until it appeared in the judgment of the Board under date of December 26, 1917. Would counsel go so far as to suggest that one of the parties in a case before a court should submit a memorandum or other material to the court months after the hearing had closed, without even informing the other parties to the case that this material had been submitted? The inference is, of course, that the Canadian Pacific Railway Company likes to insist upon narrow, technical, legal restrictions just as long as these suit its purpose, and no longer.

The Shippers' Section approaches the consideration of this issue from the standpoint of the public interest. It denies that any party to the issue has the right to limit the discussion, and believes that the Governor-in-Council is entitled to have placed before him all the information that bears directly or indirectly upon the solution of Canada's railway problem. We take particular exception to the effort of the Canadian Pacific Railway in this connection, because its contributions to the discussion have been made apparently against its will. It did not deign to associate itself actively with the presentation of material before the Board during the hearings last summer, but condescended to communicate quietly with it after all the other parties believed the discussion had ended. Even that communication was forced out of the company by reason of the contentions advanced at Winnipeg in June. The argument that has been recently submitted on behalf of the Canadian Pacific Railway to His Excellency, the Governor-in-Council, contains a great deal of information that might have been put forward by the Company when it made its application for increases, or at the latest, when the Commission was discussing the case at the public hearings. The Shippers' Section assumes the responsibility for having driven the Canadian Pacific Railway into the position where it was at least compelled to commit itself. We realize that if we had chosen to acquiesce in the Company's demand for unnecessary increases in rates no material at all would have been offered in support of that demand. We decline to admit that the Company can now take on an air of superiority, and give directions regarding the scope of the discussion. As was intimated in the former argument, it remained in the background as long as it could, and thereby encouraged the public to believe that the whole railway situation in Canada was reflected in the financial distress of the "lame ducks." Its attitude seems so unfair to us that we are disposed to question whether it has any right at all to be heard at this late date.

The commendation bestowed by Counsel for the Canadian Pacific Railway upon the recent judgment of the Board is natural, and the specifications under which it would agree to have the Board's findings disturbed do not cause any surprise to the appellants. We realize that the Company is not likely to discover anything wrong with a judgment that is so favorable to the Railway contentions. We have come to the conclusion that some of the findings are wrong, and in reaching that conclusion we do not need to reflect upon the Board's technical knowledge, or the industry it shows in making investigations of cases. We have the right to analyze and review the judgment, and to express an opinion upon the methods adopted by the Board in arriving at its decisions.

The appeal from the Shippers' Section of the Winnipeg Board of Trade to the Governor-in-Council, forwarded on January 5, 1918, contained seven reasons why the decision should be reviewed by His Excellency. These reasons have since formed the basis for our request that the judgment of the Board be set aside. Counsel for the Canadian Pacific Railway Company deals with only five of these reasons. His omission of the others is so significant that we repeat them here:

"2. The material submitted to the Board by the Companies in support of their application dealt only with selected periods of time, during which abnormal conditions prevailed. No schedule of rates can be based on abnormal conditions, or the experience derived from selected periods. The average experience of a term of years is the safe basis on which to proceed, in making any calculations of revenue and expenditure.

* * * * *

"4. Errors in railway policy with respect to location, management or the operation of subsidiary enterprises are partly responsible for the unfortunate financial condition in which some of the companies making this application have found themselves. It is not the duty of the people who contribute the freight and passenger revenue of the companies to atone for those errors, and increased tolls cannot be expected to provide the remedy. The responsibility should be placed where it belongs; the solution of the problems associated with the transportation situation should be discovered and applied by those who have created the difficulties."

The reason for the unwillingness of the Canadian Pacific Railway Company to enter into a discussion of clause 2 in our petition is not difficult to find. The reference to selected periods and abnormal conditions does not worry the Company at all. It proceeds serenely on its way, piling up surpluses of many millions every year. Its returns from traffic carried on the basis of the present rates are so large that advances in labor and material do not affect seriously the volume of profits. It is true that in an odd year the accumulation of "unspendable" monies is relatively small, but the general result of the Company's traffic operations is decidedly lucrative. The necessity of giving heed to the clause we have quoted from our petition is ignored on page 10, where a hand-picked series of decreases in net earnings is quoted as an alleged justification for advances in rates. It may be noted that in spite of the decreases for the last five months of 1917, the net earnings for the full calendar year were far in excess of the average for the

preceding four years, and were also larger than in any other year, excepting 1916, in the history of the Company. Counsel did not care to adopt the principle of the law of averages, as suggested by us. The deduction is obvious.

All the contentions we have advanced against the choice of selected periods from which to quote statistics of net earnings might be repeated in connection with the figures given on page 10. Does it not seem curious that a company, strong in its confidence of the justice of its case, should pick out the figures for a few months when earnings were abnormally low and compare them with corresponding months when the earnings were abnormally high?

The disinclination of the Company to discuss clause 4 is equally apparent. It cannot contend that the people who contribute its revenues should pay for errors on the part of the other companies; the idea would be preposterous. The Company, as we said in our former argument, is being well paid for any service it renders on the basis of the present rates, and it would be levying an unnecessary tax upon its customers if it were permitted to increase those rates. Surely it is not to be supposed that as long as the weaker companies continue to struggle and wallow in the financial mire the Canadian Pacific can strengthen its demand for the right to impose additional burdens on its constituency, when the people whom it serves are not at all concerned! The Canadian Pacific is entitled to fair returns for the work it performs, and no more. The unfortunate position of other companies cannot be used as the basis for additional exploitation. Any increased revenue that would accrue to the strong company, under such circumstances, would be "found money," and it does not need to find any money in these days of the country's trial.

An effort is made by counsel to show that the action of the Board in making an order for advances in rates under the Railway Act, instead of a recommendation under the War Measures Act, was a mere detail. Objections to it are described as "purely technical," and the precise form in which the application was made by the companies is said to be "quite immaterial." We submit that the objections are not technical, and that the form of the application is decidedly not immaterial. All the testimony offered to the Board at hearings in Eastern Canada, and most of that given at hearings in the West was based on the fact that the application was made under the War Measures Act. This testimony was used freely by the Chief Commissioner in the judgment as demonstrating that public opinion at many points supported the proposed increases. We repeat our assertion that the support was given on the understanding that increased rates were to be

associated with a *guarantee of efficient service*. The necessity for efficient service was recognized everywhere, and it was, in a way, natural that some of the business organizations mentioned in the judgment should consent to an increase under the circumstances. The reference to section 28 of the Railway Act, by which the Board is given power to make a change in the form of the application, does not cover the case at all. Our contention is that the Board heard evidence and argument on the basis of *guaranteed improvement in service*, while it decided the issue on the basis of "*easing the finances*" of the Canadian Northern and Grand Trunk (including the Grand Trunk Pacific) companies. How can it be maintained that the Commissioners are entitled to seek expressions of public opinion on one phase of the situation, and give their judgment on a totally different phase? How can they reconcile the quotation of elaborate pleas for *efficient service* with a finding in which *service is not even mentioned*? No matter what the Board may do of its own motion, it cannot hope to justify its decision in favor of "*easing the finances*" by telling us how many communities wanted a better railway service.

The criticism directed at the change made by the Board applies with still greater force to the permanent nature of the proposed advances. Practically all the discussion that took place centred around the advisability of permitting a *temporary* increase in tolls. At none of the hearings was there a suggestion that the advances would be permanent; the Chief Commissioner stated at Winnipeg, as mentioned in clause 7 of our petition, that *the increases, if granted, would be in effect for a short time only*. And yet there is not a word in the judgment, or in the order based on it, that furnishes any foundation for the hope that they will be temporary. They are as absolute as are any other increases granted by the Board. It is only when we study the factum of the Canadian Pacific Railway Company that we obtain light on that portion of the subject. We are told that "the suggestion that the order is permanent in nature is unfounded." Why does counsel undertake to interpret in this benign way the findings of the Board? If the Chief Commissioner considered that the advances were to be temporary, or that they were not permanent, why did he not say so in the judgment or in the order? "Under the Railway Act," we are told further, "it is open to any party interested to apply on short notice to have the order rescinded or varied," and also that the Board may "vary it on its own motion." We are grateful for the encouragement, but we do not rely very heavily on the assurances it contains. We beg to refer to page 3 of our former argument, where we dealt with the difficulties confronting those who might seek a reduction in rates. When a rate is established by the order of the Board it may be easily raised subse-

quently, but not easily lowered. Organized campaigns, as we have said, usually requiring the intervention of the Dominion Government or of Parliament, must be undertaken whenever the attempt to secure reductions is made. This does not apply, of course, to cases where rates in only a small section of the country are concerned, or where commodity rates are under discussion. But certainly any application for a readjustment of tolls for the purpose of bringing about decreases on the horizontal basis, as invited by the argument of the Canadian Pacific Railway, involves a task that is too severe for the unorganized public. The Board may make a readjustment on that basis of its own motion. We are not aware that the Board has done so, and the factum of the Canadian Pacific Railway Company, for a very good reason, fails to give us any examples.

The argument of the Canadian Pacific Railway Company is given over chiefly to explanations of the Company's financial position. It was to be expected that counsel would not appreciate the many references to the Company's opulence. The accumulation of wealth for the benefit of Canadian Pacific shareholders is the greatest obstacle to the advance in its rates, and this feature must detract from the value of the explanations. The position of the Company has not been "very greatly misunderstood" by the Shippers' Section of the Winnipeg Board of Trade; it has not been misunderstood at all. The facts are on record in the publications of the Company and in various documents issued under the authority of Parliament.

We insist that the application of the Canadian Pacific Railway should fail, because the Company has not even pretended to show that it "needs the money." It admits that its operations are profitable. Why, then, does it associate itself with the application for increased tolls? Because it seeks to capitalize the errors and misfortunes of the other companies. Any form of tragedy that overtakes the Canadian Northern or Grand Trunk must, presumably, be regarded with glee by the Canadian Pacific, if the latter's adherence to the "lame duck" theory be well-founded. Under such circumstances the multiplication of weak companies would redound to its benefit. Zeal for the interests of the shareholders should induce the directors to carry on a definite campaign to increase the number of "lame ducks" in the Dominion, so that the profits to the Company through the inevitable and continual advances in rates would be enormously increased. Is not the absurdity of the "lame duck" theory apparent at a glance?

The elaborate quotations from the judgment in the Western Rates Case, 1914, (pages 4 to 6 of the argument) make interesting reading, but the relation of these excerpts to the present appeal is very remote. In the first place, the railway situation in

Canada is radically different from what it was four years ago. Conclusions formed with reference to conditions obtaining at that time are not necessarily accurate now. The Board of Railway Commissioners, interpreting the law and the facts in 1914, chose to look upon the Canadian Northern and Grand Trunk Pacific as real railways. Experience has since shown that the Board was far too complimentary. The abnormal organizations that operate under the names we have just mentioned have practically lost all claim they might have had to be regarded as transportation concerns, and a basis of rates cannot be established solely on their troubles and their present predicament. Any interpretation that was charitable enough to view them from the standpoint of the business and prospects of 1914 would be out of the question today.

Counsel for the Canadian Pacific Railway quotes with emphasis the opinion of the Board that "rates should be considered having regard to the traffic necessities of Western Canada and a fair return to the carrier, apart entirely from any question of reserves of the Company on the one hand or liabilities of the Company on the other." The inference from this quotation is that the immense reserves of the Canadian Pacific Railway should be disregarded in any scheme of rate-making. It may be true that in the case of a company organized on ordinary business principles and forced to face competition at every stage of its existence the accumulation of a reserve should not be taken into account. But in the case of this Company, assisted as it was by huge subventions from the public treasury, and nursed along until it was in a position to dominate the situation, the contention that reserves can be forgotten is not to be taken seriously. Any student of Canadian affairs knows that the principal object of the Dominion Government in making liberal advances to the Company from time to time was to put it in a position where it could provide transportation at a minimum cost, either immediately or eventually. The late Sir William Van Horne, in his capacity as President of the Company, repeatedly rejected requests for reductions in rates on the ground that as the traffic increased and the Company's financial position was strengthened, it would be enabled to make voluntary reductions that would meet the needs of the people. The attitude of the late President is not forgotten by the people of the West. The Winnipeg Board of Trade is particularly careful to recall his words, because it frequently appealed to him to bring about reductions in rates. Now-a-days we have the company insisting that history be eliminated, and that the accumulations of wealth founded on the Government aid received in the past be left out of the discussion. Counsel is placing too heavy a strain on our patience and toleration. The people of Canada have permitted the Canadian Pacific Railway Company to amass surplus

assets amounting to hundreds of millions *because they believed that these assets would at some future date enable the Company to provide transportation at unusually low rates.* In a country like Canada, where population is sparse and distances are great, the cost to the people for railway service should be far below that prevailing in other countries. Apologists for high rates are in the habit of quoting with approval comparisons with the United States to show that tolls here are not exorbitant. The comparisons are far-fetched because conditions are essentially different. Railway companies in the United States have been organized on ordinary business principles, without Government bounty. There, too, most of the districts are densely populated, so that distance is not as important a factor. Unfortunately a great deal of the railway law in this country appears to be borrowed from or based on decisions in the United States, and sufficient regard is not paid to the wide difference in the conditions. We submit that the reserves of the Canadian Pacific Railway Company constitute a most important factor in the rate situation. We believe that the Company should be compelled to make use of at least a part of its enormous accumulations for the purpose of providing transportation to the people of Canada at rates lower than those prevailing in any other part of the world.

In repudiating the idea of including the Company's reserves in a calculation of rates counsel quotes, as has been noted, the refusal to take account of liabilities as well. Of course it may be said that he means only the liabilities of his own company, but the opinion of the Board of Railway Commissioners must be interpreted more broadly. The liabilities of the Canadian Northern and Grand Trunk Pacific Railway Companies should be disregarded, according to that view. *The liabilities of these weaker companies are responsible for their present financial distress.* If they or their representatives could eliminate the pressing obligations that now face them they would not require to make applications for increases in rates. They would be able to operate very successfully, and render excellent service to the country on the present basis if they could get permission to disregard liabilities in the same way that counsel for the Canadian Pacific Railway intimates he can disregard reserves. Even if "rates should be considered with regard only to the traffic necessities of the Dominion and a fair return to the carrier," are increases warranted now? Assuredly the statements in the annual reports of the Canadian Pacific do not prove any advances are justified. It is doing no more than meet the traffic necessities of the country, and it is deriving more than a fair return for the service it renders. We intimated in our former argument that we were willing to test the question of remunerativeness in the matter of rates by ex-

amining the position of a normal company operating in normal territory under normal conditions. Judged by this standard the Canadian Pacific might afford *to handle its traffic for a little more than half what it is now charging*, and still be indebted to the people of this country. If fairness of rates is to be determined all the conditions must be taken into account, not merely those that may seem to favor the contentions of the Canadian Pacific Railway. We do not appreciate the significance of quotations from the judgment in the Western Rates Case in the same way as does counsel for the Canadian Pacific Railway, because we can note his unwillingness to make the necessary allowances for changes in conditions in Canada and for differences in conditions in this country as compared with the United States.

The Shippers' Section first made the statement in connection with this appeal that the proportion of increased revenue that would accrue to the Canadian Pacific Railway would be about \$20,000,000 per annum. We were glad to make the correction in our former argument, after Mr. Beatty had asserted it would be \$13,000,000. We find now that the amount for a full year is placed at \$13,946,000. This is computed by means of a rough estimate of 12½ per cent. as the increase on all freight traffic except grain, coal and coke, and an even rougher estimate with reference to passenger traffic. Shippers generally would have reckoned the average increase in general freight revenue at more than 12½ per cent., but it may not be necessary to go into details. With regard to the passenger business the estimate seems too low. Fifteen per cent. on all the traffic in that department in 1917 would be approximately \$4,500,000. The amount given is \$2,500,000, or five-ninths of the total. We cannot believe that the British Columbia local business, the military and coolie traffic, and the inter-line business produce in the aggregate four-ninths of the passenger revenue of the Company. And yet this inference must be drawn from the calculation of the Passenger Traffic Manager.

The exact amount that the Canadian Pacific Railway would levy in the form of unnecessary taxation is not of vital importance, but we are of the opinion that it would be somewhat in excess of the sum mentioned in the Company's argument. Probably the total would be nearer \$20,000,000 per annum than \$13,000,000. *Whatever it may be, it is unnecessary, and, therefore, the public interest demands that it should not be exacted.* Every opportunity has been given to the Company to justify its application for additional revenue, and it has not done so. An additional imposition of between \$13,000,000 and \$20,000,000 every year surely requires abundant justification.

When the argument deals with the surplus of the Company it develops some surprising contentions. The surpluses are said to

be due entirely to low capitalization and not to excessive earnings. Large amounts of cash, not represented by outstanding securities, have been invested in the railway properties. From this it is deduced that while the return on the securities issued has been substantial the return on the cash investment has been very moderate. These statements must be carefully analyzed because all their meaning is not apparent on the surface. They are as important for what they omit to say as for what they say. One might be led to infer that the Company had, from its inception, managed its finances in a way that admitted of no criticism, from either its shareholders or the public. We note the distinction drawn between the methods pursued by other companies and those of the Canadian Pacific. "If the Canadian Pacific, for example," the factum says at page 8, "had been financed in the usual way, between twelve and thirteen million dollars per annum would be added to its fixed charges." *The people of Canada financed the Canadian Pacific originally and that is the real reason why its fixed charges are so low.* That is the reason, too, as we have said, why the people expect the surplus of the Company to be devoted, in part at least, to the reduction of transportation charges. Willingness to give the Company credit for careful management does not involve the necessity of lauding it on account of its success in the making of agreements with Governments. *No railway company in the world's history has been endowed as liberally as the Canadian Pacific, and no company has enforced more onerous tariffs of transportation charges in response to liberal treatment.* Talk about "low capitalization" and "small return" is so misleading that one can only believe the Company wishes to deny history altogether.

The low capitalization is due to the excessive earnings. The Company has been enabled by means of exorbitant rates to conduct its business at an immense profit in almost every year since its line was completed. The fact that these rates were "legal" does not excuse the Company. If it were animated by the spirit of patriotism and sacrifice to which it makes reference in the second paragraph on page 17 of its argument it surely would not allow a technicality to interfere with its effervescent desire to help and sustain the people of this country. "Legal" rates are very seldom low rates, and they are not necessarily fair rates; "all the traffic will bear" is not a forgotten slogan. As long as the Company was able to pile up huge surpluses from year to year it did not need to issue new capital stock. It used the surplus as required for the renewal of lines or for new construction. Of course that proceeding kept the fixed charges down to a minimum. It is even possible to conceive that the capital stock might be reduced by the employment of the surplus. If the Company should choose

to cut its capital in half it might easily do so without injustice to the shareholders. Capitalization in the case of this Company is relatively unimportant. The surplus is the element that gives strength to the financial position.

The Company may find it convenient to regard as "capital investment" all the money that has been spent on the Canadian Pacific Railway to date. The Company's convenience is not an issue. The public knows that a good deal of the money originally spent on the railway is now regarded as having been wasted. The "errors in location" mentioned by us in clause 4 of our petition do not seriously affect the Canadian Pacific now, but they have been responsible in the past for huge expenditures. Can these outlays be regarded as "capital investment"? The Company has been operating for nearly thirty-seven years. We must deduct from its alleged capital investment of \$800,000,000 all the sums that have been spent in thirty-seven years to correct the errors in location. The figures for that department of railway outlay cannot be obtained by the public, but the Company can give them to His Excellency the Governor-in-Council. The item is a large one, and even the sum of \$230,000,000 unrepresented by securities, as noted on page 8 of the factum, might be required to cover it. The Shippers' Section is amazed to learn that the Canadian Pacific desires to regard as capital all the money it has spent on its railway plant. If that method of financing were to be recognized generally it would lead to some peculiar situations. The public might demand that more and more money be spent to correct errors in railway location, and thereby ensure better service. As long as the Company continued to spend that money it might presumably charge exorbitant rates and accumulate huge surpluses. If complaint were made, counsel could point, with an expression of mingled pride and regret, to the fact that the return on the "capital investment" was no larger; that it was, indeed, decreasing. An application for increased rates might even be made.

Ordinary industrial concerns must be interested in the example quoted by the Company in this connection. The man who can increase the value of his plant from \$100,000 to \$500,000 in twenty years is operating very successfully, because his gain in capital is \$400,000, representing an increase of \$20,000, or twenty per cent. per annum. He invites competition by that showing alone, and competition would regulate all his activities. The analogy with the railway corporation does not hold, especially as the real value of its plant is little more than the amount of subventions it has received from the public.

It is difficult to fix rates on the basis of capital unless that

basis is carefully defined and restricted. The argument of the Company gives no hope that it may ever be willing to limit the amount it chooses to regard as its capital investment.

If we deduct from the value of the railway company's plant the amount of financial assistance it has received, the annual return of \$46,000,000 represents a bewildering result. Instead of the 5 $\frac{1}{2}$ per cent. mentioned in argument it would be nearer 575 per cent. The Company's "unusual" way of financing should exercise pressure in the direction of reductions in rates, as has been suggested by the Vancouver Board of Trade during the hearing of this case.

The attempt to interpret "capital investment" as meaning the amount of money spent on the railway in 37 years runs through the argument, and forms the ground-work for many quotations and calculations. We do not admit that the Company is entitled to earn in its railway department more than a fair return on the actual amount of capital it is now using for the purpose of providing the public with transportation service. This method of calculation, applied to the figures and quotations submitted in the factum, would give a result totally different from that reached by counsel for the Company.

The argument goes to an extreme limit whenever it contends that the wealth and reserves are to be treated as of no account. We have already referred to this phase of the subject, but counsel returns to it so many times that it may be necessary to repeat what has been said. The reserves of the Canadian Pacific Railway Company have been accumulated with the knowledge, and with the consent, more or less unwillingly given, of the people of Canada. The surplus has been regarded by the people as a sort of insurance fund, with which to provide at a future date efficient transportation at little more than nominal rates. How different is the Company's conception! It thinks the surplus has no relation to the public interest, and that the shareholders alone can absorb its benefits. A more selfish construction of a railway agreement could not be imagined.

The question of remunerativeness comes up in the discussion of the railway profits. The extraordinary contention that rates are inadequate because the Canadian Pacific's competitors cannot secure a fair return is made. Of course everything depends on what one considers a fair return. The competitors are undoubtedly suffering from the result of excessive zeal and ambition, coupled with the reaction from political persuasion. But no one need suppose they are not making a fair return. They are earning large profits on the amount of money that represents their net working

capital. If we deduct, again, from the value of the roads the amount of the Government subventions, we find that these weaker companies are making an enormous return. But the companies do not make their calculations after that method; they prefer to capitalize their blunders and make the public carry the burden. The mill-stone of fixed charges is weighing them down more and more, and the farther down they go the keener is their anxiety to make the public carry the load they themselves have been supposed to undertake.

The statement is made (without support) that shippers should contribute through increased rates towards lightening the burdens imposed upon the carriers through heavier cost of operation. The suggestion that the sums necessary be raised by taxation or Government assistance is not accepted by the Company, although it should appeal very strongly to it on traditional grounds. The Canadian Pacific, in the early days, was glad to be favored with Government assistance. This point was discussed at the hearing in Ottawa on January 24. It was then demonstrated that when the Company was in a desperate position the Government declined to approve of an advance in rates, but chose to give actual financial assistance.

In the same paragraph that draws attention to the increases in items making up the cost of transportation we find a suggestion that the producer of grain is now in a much better position to pay increased tolls. The producer of grain knows more about increases in cost of doing business than do the railways. Arguments from other sources will deal with that phase, and we merely draw attention to it here.

It was to be expected that the declarations made by Mr. Phippen at Winnipeg with reference to the financial advantages enjoyed by the Canadian Pacific Railway would come up for consideration in this argument. We are surprised to notice, however, that the contract undertaken by the promoters of the Company was "onerous." At no time since it was undertaken has it been onerous. It has been a gold mine, the foundation of some of the country's most renowned fortunes. The Dominion Government had promised to arrange that a railway across the continent should be built. It actually constructed some 700 miles of that line. When the Canadian Pacific syndicate was formed these completed sections were turned over to it, as a gift, together with the immense cash subsidy and the huge land grant mentioned by counsel in this argument. Even with all that bounty the men who were assuming the "onerous" task were not satisfied. They made frequent pilgrimages to Ottawa for the purpose of obtaining more cash or more credit, or both. *They actually received from the Govern-*

ment more money than was needed to complete their contract, according to their own figures. Is there anything very "onerous" in that procedure? It is no wonder that from the start the syndicate was able to pay big dividends to itself every year. Most railways decline to pay dividends during the days of original construction, but the Canadian Pacific was being financed, as we are now assured, in an "unusual" way. The members of the syndicate were forced to do something with the surplus they received from the Government, and it was only natural, from their standpoint, that they should recoup themselves with "dividends." Interest due to the Government and wages due to the men employed on the work were allowed to fall behind occasionally, but nothing interfered with the sacred "dividends." It would appear that Mr. Phippen was most considerate in his suggestions at the Winnipeg hearing; at any rate he has not seen fit to modify or withdraw them in the course of his representations during this appeal.

Because the subject is raised so frequently as a result of our references to it in our original petition, we repeat that *the Interstate Commerce Commission of the United States denied the application of the companies there for permission to make a horizontal advance in rates. It declined to consider statistics based on abnormal periods and abnormal conditions as arguments in favor of increases, and it disapproved of the whole principle of horizontal advances.* We are not at all frightened by the suggestion of counsel that we should keep silent on the subject of the Interstate Commerce Commission, and its attitude towards the railways. That body has prevented the companies in the United States from becoming parties, consciously or unconsciously, to some of the most stupendous stock-jobbing campaigns that could have been devised. The desperate efforts of those companies to "stampede" the Commission are well-known. Needed expenditures on railway property and equipment were postponed deliberately with the purpose of hastening deterioration, so that the element of "panic" might be more effective. This campaign has gone on for years, and has had influential support in certain financial and political circles there. It is small wonder that the United States Government has found it necessary to provide \$500,000,000 now for improvements and equipment. If the campaign had proceeded much longer the amount would have been nearer \$2,500,000,000. And withal the "stampede" has been a failure. Why should the appellants refrain from discussing the Interstate Commerce Commission? Counsel quotes the Pennsylvania Railroad as an outstanding example, using the now familiar "property investment" as the basis of return required. Why not take the New York, New Haven & Hartford as a sample, and tell the whole story?

The theory that the western people should submit permanently to the discrimination from which they suffer in the matter of transportation charges persists in spite of the so-called progress of the country. We observe that the subject was "set at rest" in 1914. The principal difficulty now is that it refuses to "stay dead," but comes to the front whenever any general question of rates is under discussion. We maintain, and will continue to maintain, that the disparity should be removed, and that rates should be uniform throughout the Dominion.

The questions arising out of the Manitoba agreement have already been discussed carefully by counsel for the Governments of the three Prairie Provinces, and it is not necessary to add to the contentions he has advanced. We would suggest that the rights of the Provinces should be superior to those of private organizations when the construction of agreements is engaging the attention of His Excellency the Governor-in-Council.

The proposal to take over the lines of all the railways in Canada arouses a great deal of antagonism on the part of the Canadian Pacific Railway Company, as has been expected. Loud wails are made about the "confiscation and destruction of the property, credit and organization" of the Company, and the complaint is made that money belonging to the shareholders will be devoted to maintaining and sustaining the unproductive railways. There is fear of the "disruption and annihilation of the strength and efficiency of the Canadian Pacific Railway Company." The disaster comes as near to being total as words can bring it. It may be that some forgiveness should be asked by the Shippers' Section for having suggested so many calamities in one breath. But we are more firmly disposed than ever before to insist on the adoption of the policy we have advocated. From time immemorial the wails, complaints and fears have rent the atmosphere whenever an effort was being made to readjust conditions for the benefit of the public at large. The Canadian Pacific Railway Company is merely going through the motions practised by every organized interest when its stronghold is invaded by the forces of reform. It weeps a little, moans a little and praises itself moderately. Then it goes on to mention the "dismay" of the Company's security-holders and stockholders, and of the financial world at large. Why should there be any "dismay" if the Government agrees to give to the owners of the Company's railway assets as large a return as they are now receiving? Would the credit of Canada suffer by that course? And while the "dismay" of the security-holders and stockholders is being considered, let us suggest that the "dismay" of the man who pays the freight bills is also fairly robust.

The Shippers' Section agrees entirely with the general prin-

ciples indicated in the extract quoted from President Wilson's address. It particularly approves of his declaration that "*our first duty is, of course, to conserve the common interest and the common safety, and to make certain that nothing stands in the way of the successful prosecution of the great war for liberty and justice.*"

We submit that counsel for the Canadian Pacific Railway Company has entirely failed to establish the claim of the Company that it should be permitted to take \$13,946,000 more from the people of this country every year.

**REPLY TO ARGUMENT SUBMITTED ON BEHALF OF THE CANADIAN
NORTHERN RAILWAY COMPANY.**

The status of the Canadian Northern Railway Company with respect to this appeal is not very clearly defined. When the application was being heard at the various sittings last summer the intention of the Dominion Government to acquire the railway was generally known, because legislation to that effect had been introduced in Parliament. Until the agreement between the Government and the Company could be carried into effect it was recognized that some time must elapse. The eager haste shown in prosecuting the application before the Board had its motive in the apparent desire of the Company to secure as much revenue as possible before surrendering the property. That motive should be less apparent today because the arrangements for acquiring the railway have practically been completed; even if the advance permitted by the Board's judgment were allowed to go into effect the benefits to the Canadian Northern Company would be of short duration. The intimation in the oral argument at Ottawa on January 24, that the Company might be interested now for the purpose of augmenting its valuation of the railway as a going concern should not be forgotten in this connection. Counsel for the Canadian Northern has approached the consideration of the appeal as if the Company were a virile, progressive and enterprising concern. No argument is needed to show that it falls far short of that description. It is preparing to go out of existence as a private corporation, and the augmentation of revenue that, in the event of its application succeeding, would accrue to it seems scarcely sufficient to justify so much interest in the subject. In view of the references made by the Chief Commissioner in his judgment (p. 429) to the country's acquisition of the railway, it would have been supposed that the Government itself, rather than the expiring railway company, should have been associated with the appeal.

On account of the uncertain status of the Canadian Northern it is difficult for us to deal seriously with the argument offered

in its behalf. But we recognize that the contentions made there call for some consideration. The feature of the factum is the desire of counsel to reproduce those parts of the Board's judgment that contain any apparent measure of justification for rate advances. The reference at the bottom of p. 7 to the resolution passed by the Board of Trade of Duncan, B.C., in strong opposition to the increases seems to have crept in by error, because all the other quotations are intended to show that public sentiment was practically unanimous in favor of the companies' demands. We would refer, in this connection, to our printed argument where we endeavored to point out that the support received by the railway companies from the public was based on the supposition, *now known to be totally unwarranted*, that the additional revenues were to be used to provide efficient service on the Canadian Northern and Grand Trunk Railways. It is easy to induce business organizations to fall in line and support the railway companies *when the very existence of their trade is threatened through a paralysis of transportation systems*. It is not going too far to suggest that a campaign with the object of enlisting that support was carefully waged on behalf of the railway companies among the members of business organizations. It succeeded in some parts of the country because the "camouflage" about "efficient service" was cleverly applied. Counsel for the Canadian Northern Railway is too particular in his choice of excerpts. He makes one mistake in the case of the Duncan Board of Trade, as has been noted, but he says nothing about the Vancouver or Winnipeg Boards of Trade, or the Canadian Credit Men's Trust Association, or the Canadian Council of Agriculture or the Retail Lumbermen's Association, or the Retail Merchants' Association. The statement in the factum that "the consensus of the majority of those attending the meetings of the Board was in favor of granting substantial relief to the railways" is not borne out by a review of all the evidence. The opposition, even at the hearings, was vigorous and determined, and it is to be remembered that the railway companies' statements had not at that time come in for the analysis and scrutiny to which they have since been subjected. We know that a decidedly different attitude has recently been adopted by some of the organizations whose opinions are quoted in support of the advances. The Regina and Saskatoon Boards of Trade, for instance, have expressed by resolution their dissatisfaction with the judgment of the Board, while public opinion in other parts of Canada has become aroused over the possibility of immense additional taxation that would be levied if the findings of the Board were enforced. The press of Toronto, with which counsel for the Canadian Northern is more or less in touch, reflects the sentiment of the people on the subject clearly enough. It is loud in its denunciation of the judgment.

We express our firm conviction that public opinion in Canada at the present time strongly supports the attitude the Shippers' Section has taken in opposition to increases in tolls. We can disregard the expressions of immature opinion from bodies whose support has been obtained by reason of their being misled. The carefully prepared enthusiasm of other organizations is understood and appreciated at its proper value, especially since these bodies have carefully refrained from insisting upon the observance of the conditions they attached to their consent.

It would appear that nearly every reference to the financial distress of the Canadian Northern made by the Chief Commissioner in his judgment meets with the approval of counsel for the Company. The practice of parading misfortunes is familiar to those who have had experience in railway rate cases, and the continuance of it excites no particular concern.

The Shippers' Section repeats its declaration that the application of the Canadian companies for increases *was made presumably in imitation of the procedure followed by the companies in the United States*. The fact that the companies here were "considering the matter" previous to the American application does not prove anything.

Errors in railway policy have been largely responsible for the failure of the Canadian Northern. Counsel lays stress upon the profitable character of the branch lines in the West, but *says nothing about the lines in the East*. He does not assert that the main line, as at present constituted, is profitable, even with the active feeders it has in the West.

The reluctance to consider questions of railway policy, even before the Governor-in-Council, is to be expected in the case of counsel for the companies, but their unwillingness does not prevent us from urging our views. The Right Honorable the Prime Minister has been good enough to suggest that alternative plans be submitted with the argument. Something more impressive from counsel than a refusal to consider these alternatives is required to distract our attention. Would not a statement of opinion from the officials of the Canadian Northern Railway on the wisdom of taking over all the lines in Canada be illuminating at this time?

While counsel for the Canadian Pacific has endeavored to explain away the convincing information offered by Mr. Phippen at the Winnipeg hearing with reference to the financial position of the leading Company, it is worth noting that counsel for the Canadian Northern Railway, in his argument, does not retract or correct any of the statements he made in that connection.

REPLY TO ARGUMENT OFFERED ON BEHALF OF THE GRAND TRUNK RAILWAY COMPANY OF CANADA AND THE GRAND TRUNK PACIFIC RAILWAY COMPANY.

The statement that questions of policy may not be properly brought before His Excellency the Governor-in-Council upon an appeal of this kind is not based on an appreciation of the real situation. As has been intimated in our reply to the Canadian Northern argument, Sir Robert Borden distinctly asked for suggestions that might be regarded as assisting the Government in the determination of its policy. By so doing the Right Honorable the Prime Minister gave abundant justification for representations regarding the course that should be followed in dealing with the railway situation. The effort to confine the issue is so apparent in the arguments from the three companies that we can only express surprise at the inability of counsel to appreciate the significance of Sir Robert Borden's suggestion.

Counsel for the Grand Trunk Railway is at one with the others in complaining that no error in the findings of fact made by the Board has been alleged by the appellants. The objection is insignificant, because it is not necessary to discover errors in findings of fact in order to take exception to the judgment. Nor is it necessary to prove that the proposed rates would be unjust and unreasonable as far as the Grand Trunk Railway is concerned. We realize that rates must apply to all the companies uniformly, and at the same time we reject the "lame-duck" theory. We base our contentions on the fact that additional impositions by the Canadian Pacific Railway would constitute an unjust and unreasonable proceeding, apart from the indirect effect they would have on the fortunes of the other companies.

The Grand Trunk Railway rejects our suggestion that the change in the form of application made by the Board altered the whole aspect of the case, as far as the attitude of the public towards it was concerned. We insist that the change should not have been made without paying due regard to the possibility of the subject being viewed differently by the various bodies whose opinions had been obtained at the hearings.

The unwillingness to accept the law of averages as the basis for calculations of revenues and expenditures is merely an indication that the companies would find themselves in an inconvenient position with respect to this application. Is it to be contended that railway rates will follow fluctuations in cost of labor and material, or in net earnings? *Why, then, have not the companies reduced their rates whenever their net earnings showed increases?*

The contention that the Inter-State Commerce Commission denied the application of the railroad in the United States for

permission to make horizontal advances in rates has not been attacked, for the reason that it is entirely accurate. The Commission did permit the roads to make some advances, in the nature of adjustments, as we stated in our former argument. But the rates that were raised were abnormally low, and nothing in the schedules of the Canadian companies for traffic in similar territory could compare with them in that respect.

It may be noted that in quoting from the judgment counsel is prepared to accept the conclusions that appear to encourage the companies in their demand. We quote a sentence or two from p. 435 of the finding to shed a little light on the real situation: "*The Grand Trunk from time to time has had to make good deficits occurring on the American portions of the system, amounting to large sums of money. This again has been the subject of complaint by the Canadian shippers, who have urged that the surplus that the Company earned out of their rates (in Canada) was used by the Company to enable it to carry on transportation in the United States at less than cost.*" Counsel for the Grand Trunk Railway must be in a position to appreciate the necessity for adjustments of some rates in the United States that mean fairly large increases. If business is accepted there at unreasonably low rates, a review of the situation by the Inter-State Commerce Commission would be bound to result in increasing those rates.

We submit that the contentions offered by counsel for the Grand Trunk Railway have not furnished additional reasons for making the advances. Quotations from the judgment cannot be regarded as proof that the finding of the Board is in accord with the needs of the situation.

REVIEW.

The issues raised by the appeal of the Shippers' Section are so many and varied that it has been difficult to deal with all of them in a way that would reflect our study of the case. We would have been glad to discuss the judgment of the Board with regard to many points that have not been touched by us, but we realize that only a limited amount of time can be devoted by the Cabinet Council to a consideration of this material. We have paid particular attention to the position of the Canadian Pacific Railway Company, partly because that position was not, in our opinion, sufficiently considered by the Board in its handling of the subject. The position of other companies is relatively unimportant; one of them is to be absorbed by the Government, and the other may meet the same fate before the war is terminated. *Our chief concern is to point out that the proposed increases in rates will not meet the issues involved.* They will strengthen the position of the Canadian Pacific enormously, and will bring some small meas-

ure of help to the others. But the problems will remain, and *the public disappointment will be all the keener because the attempted solution is ineffectual.*

Government control and operation of all the railways during the period of the war will alone satisfy the requirements of the present situation. We strongly urge His Excellency the Governor-in-Council to formulate legislation to carry out that policy, and to arrange to have it enacted by Parliament at the approaching session.

We repeat our request that the judgment of the Board of Railway Commissioners be rescinded.

THE WINNIPEG BOARD OF TRADE.
(Shippers' Section)

E. D. MARTIN,
(Chairman)

A. E. BOYLE,
(Secretary)

Winnipeg, Feb. 25, 1918.

